

7-139. Implementation and Enforcement of 111(d)(2) and 111(d)/(2)/129(b)(3) Federal Plans

1200 TN 484
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1. **AUTHORITY.** To implement and enforce Federal plans promulgated pursuant to sections 111(d)(2) or 111(d)(2)/129(b)(3) of the Clean Air Act.
2. **TO WHOM DELEGATED.** Regional Administrators.
3. **LIMITATIONS.**
 - a. *For redelegations from Regional Administrators to States or Tribes only:*
Regional Administrators may consider redelegating authority to implement and enforce Federal Plans if all of the following are true:
 1. For Tribes, the Tribe has already established its eligibility to be treated in the same manner as a State. (Note: This determination is made pursuant to 40 CFR §§ 49.6 and 49.7).
 2. The State or Tribe does not already have an EPA-approved State or Tribal plan.
 3. The State or Tribe has submitted to the appropriate Regional Administrator a written request for the redelegation and has demonstrated that it has satisfied EPA's criteria for redelegation including, at a minimum, a demonstration of adequate resources and legal and enforcement authority to administer and enforce the Federal plan at issue.
 4. The State or Tribe has entered into a Memorandum of Agreement (MOA) with the Regional Administrator that sets forth the terms, conditions and effective date of the redelegation, and that serves as the mechanism for the transfer of authority. The MOA shall include a provision acknowledging that the Regional Administrator has the authority to revoke all or part of the redelegation if the Regional Administrator determines that a State or Tribe has failed to properly implement or enforce the Federal plan. Upon signature of the MOA, the Regional Administrator must publish a notice in the Federal Register that notifies all interested parties of the redelegation and incorporates the redelegation into 40 CFR Part 62.
 - b. Regional Administrators will continue to retain enforcement authority along with a State or Tribe after redelegation to a State or Tribe of authority to implement and enforce the Federal plan.
 - c. Regional Administrators and/or the Office of Air and Radiation will continue to retain any other specific authorities reserved to EPA in individual Federal plans.

4. REDELEGATION AUTHORITY.

- a. The authority to implement and enforce Federal plans may be redelegated to States and/or Tribes in accordance with the terms under the Limitations section. This redelegation authority is reserved for the Regional Administrators only.
- b. Within the Region, the authority to implement and enforce the Federal Plan may be redelegated to the Regional Air Division Director, or equivalent, and may not be redelegated further.

5. ADDITIONAL REFERENCES.

- a. Section 301(a) of the Clean Air Act, 42 U.S.C. § 7601(a), as amended by the Clean Air Act Amendments of 1990, Pub. L. No. 101-549, 104 Stat. 2399.
- b. Section 301(d) of the Clean Air Act, 42 U.S.C. § 7601(d), as amended by the Clean Air Act Amendments of 1990, Pub. L. No. 101-549, 104 Stat. 2399.
- c. 40 CFR §§ 49.6 and 49.7.
- d. 40 CFR § 60.27.